

Submitted May 25, 2005
Approved As Amended
Date May 25, 2005

MINUTES OF THE ROCKVILLE PLANNING COMMISSION
MEETING NO. 8-05
Wednesday, April 27, 2005

The City of Rockville Planning Commission convened in regular session in the City Hall Council Chamber Room at 7:00 p.m., Wednesday, April 27, 2005.

PRESENT
John Britton, Chair
Frank Hilton Gerald Holtz
Steve Johnson Kate Ostell
Robin Wiener

Present: Art Chambers, Director, Community Planning & Development Services
Deane Mellander, Acting Chief of Planning
Sondra Block, Assistant City Attorney
Castor Chasten, Planner III

RECOMMENDATION TO THE BOARD OF APPEALS

Special Exception SPX2005-00352, Tamar & David Pinto - a request to increase the number of children being cared for by the existing home day care operation from 8 to 12 children, located at 5 Rollins Court - in the R-75 Zone.

Mr. Chasten presented the staff report. Mr. Chasten stated that the applicants currently provide childcare services in their home in accordance with applicable local, county, and state regulations governing “child care home” operations. In accordance with Section, 25-296 of the Ordinance land uses are permitted in the R-75 Zone, allowing a provider to care for a maximum of eight children in a home setting. The applicants wish to increase the number of children they care for from eight to twelve children. The request and proposal to increase the number of children cared for, changes the status of the existing operation to a “childcare center” as defined in the Ordinance.

Mr. Chasten stated that the childcare operation would continue to be located on the ground level of the applicants’ home. The hours of operation will remain the same as those of the current childcare home operation – weekdays from 9:00 am to 3:30 pm, September thru July. The applicants have noted that two of the proposed four children to be cared for by the childcare center are expected to be enrolled from 8:30 am to 4:30 pm. The day care operation will continue to operate under the 9:00 am to 3:30 pm schedule. The center will be closed on all major federal government and Jewish holidays and closed for two weeks during designated winter and spring breaks. There are no childcare services provided for

six weeks during the summer. Children being cared for range in age from 22 months to three years. In accordance with the Zoning Ordinance, a total of three parking spaces is required for the proposed "12-child" day care center – one parking space for each four children being cared for by the center is required, either provided on-site or on the street abutting the subject site. The applicants' home has the capacity to park two vehicles and additional parking is available along the site's street frontage.

Mr. Chasten noted that there would be no exterior renovation or expansion planned for this proposal. Mr. Chasten mentioned the letters of support and of concern that have been submitted.

Commissioner Hilton informed staff that the required sign is on the property, but it has no date for the Board of Appeals meeting. He said the sign is also partially obscured from the streetscape; therefore, it is not serving its purpose. Mr. Chasten replied that the sign was posted in February 2005. The Board meets in two weeks and it will be corrected.

Commissioner Johnson inquired if there have been any complaints from the neighborhood about this child-care facility with the eight children. Mr. Chasten replied no.

Commissioner Britton explained the process and that the Commission would only making a recommendation to the Board of Appeals on this application tonight.

Tamar Pinto presented her request. She stated that she has been a certified teacher for 12 years. She said she has three children of her own, ages 11, 7 and 3 years, and she currently cares for seven children, plus her 3-year-old child, in her home. She is asking for approval to increase the number of children up to 12 children, which is the maximum amount for a childcare center. Ms. Pinto stated that her three children are included in the 12 children, which makes a difference of only two more children. Currently, she has seven non-relative children and she is asking for nine including her own three children. She would have 12 children in her home, if her special exception were approved. Ms. Pinto presented a chart to show the Commission all the houses surrounding her property. She stated that the neighbors shown on the chart have submitted letters of support with the exception of one neighbor. Ms. Pinto noted that four families are home during the day and have no problem with the application. Her childcare center would be closed six weeks out of the year and is open from 9:00 a.m. to 3:30 p.m., which is not during the rush hour so that it would make traffic an issue. She explained that her childcare center is a Jewish educational daycare with mostly Israelis registered. She stated that there are a large number of families wishing to enroll their children in her daycare. Many parents can walk their children to her house.

Commissioner Holtz asked if the age restriction is up to 6 years old. Ms. Pinto replied that under her current license, any child under six who lives in the home in which the daycare center is operating must be included in the eight children she is allowed to have under her care. Commissioner Holtz asked if there would be any employees. Ms. Pinto replied that she has one assistant and she will continue to work for her and she would park on the street. Commissioner Holtz inquired about two of the children who would be at the center from

8:30 a.m. to 4:30 p.m. Ms. Pinto replied that this is an option in order to reduce the traffic issue even more with the different arrival and departure times.

Commissioner Johnson asked if it would be a bit disruptive having two children coming in and leaving at different times. Ms. Pinto stated that they are trying to obtain stability. Most of children arrive by 9:00 a.m. and leave at 3:30 p.m. Commissioner Johnson questioned how many children would walk to the center. Ms. Pinto replied that three children would be walking most of the time and the parents of three of the children are driving. The additional two children - one child is being driven and one child arrives by walking.

Commissioner Hilton asked if Ms. Pinto was aware that this special exception does not run with the land. Ms. Pinto replied that she is aware of the regulation.

Commissioner Ostell noted that one of the letters sent in to the Commission mentioned a concern about parking during special events. Ms. Pinto replied that the center does not have special events.

Commissioner Ostell asked if Ms. Pinto would be anticipating applying for further increases. Ms. Pinto replied that the regulations state that no more than 12 children are allowed in a residential home.

Commissioner Britton pointed out that two properties are not highlighted on the chart. He asked Ms. Pinto what her understanding was as to why the two families were not in support of the special exception. Ms. Pinto explained that one of the neighbors is present tonight and the other neighbor sent a letter opposing her childcare center. She has read the letter and spoke by phone to Mrs. Kedem, at 3 Rollins Court. Ms. Pinto stated that Mrs. Kedem informed her that the only time they realized that there was a child-care on their court was when they received the notice from the City about the special exception. She was told that the Kedems leave much earlier in the morning and arrive home much later in the evening. Ms. Pinto noted that Mrs. Kedem told her of a previous daycare on the Court damaged a parked car at 3 Rollins Court, but she feels that that incident is not relevant to her case.

The following citizens testified:

1. Alan Greenberg, 6 Martha Court, stated that his backyard shares a common boundary with the Pinto property. He said the letter he sent to the Chairman of the Board of Appeals sums up his position. He said he does not support a 12 children facility facing his backyard because it negatively affects his property value. He said he has a letter from a prominent realtor in support of his position. He pointed out that it is like an unlawful taking of a property and anyone looking at his property would see something less desirable. He wishes that the day care center would not have to be concentrated in his backyard.

Commissioner Johnson asked Greenberg if he is home during those hours. Mr. Greenberg replied that he said he is home all day during business hours. Commissioner Johnson questioned whether there was any indication that she did any kind of an analysis or study of

homebuyers or families who might have children who might find it a tremendous value that there is a day care center in their backyard. Commissioner Johnson stated that he feels that people would find the house value would increase. Commissioner Johnson asked how much of the day the children in backyard are. Mr. Greenberg replied that he had no complaints about that. It would be strictly an economical burden. He thanked Ms. Pinto for the way in which she runs her daycare and it does not disturb him.

Commissioner Holtz stated that two to four children would put it over the top and he asked Mr. Greenberg if that would change things. Mr. Greenberg replied that the more children in backyard would lessen the value of his house. He is not complaining about the business, it just impairs the value of his property.

Commissioner Wiener asked Mr. Greenberg when he purchased his home. Mr. Greenberg replied last July. Commissioner Wiener asked if the daycare center influenced his buying the home. Mr. Greenberg replied that he was under a lot of pressure when buying the home and he did not know the daycare was there.

Commissioner Ostell asked if Mr. Greenberg had any conversations with other homeowners on the court. Mr. Greenberg replied that he had a conversation with two homeowners on either side of him. He said that they understood his reasoning.

Commissioner Hilton stated that when he went to neighborhood he saw there was a board on board fence in front of the Pinto's home. He asked Mr. Greenberg how he would describe the property line between the his property and the Pinto's property with regard to fencing or screening of any kind. Mr. Greenberg stated that he believes there is a low fence, but it does not block the line of site. Ms. Pinto presented a photo of the fence and the backyard with many toys and playthings.

2. David Brenner, 612 Muriel Street, stated that he lives three blocks away. He said that this is a residential area. What he sees is creeping commercial. He said he did not know there was a daycare center there. He said his big concern is of creeping businesses in residential areas. He said he thinks the approvals of the neighbors are only a get a long thing.

Commissioner Britton responded to a couple of comments that were made this evening. He clarified that this is a use permitted by law under special exception. The Commission looks at the use to make sure that it does not have an adverse impact on the community, health and safety of residents, change the character of the neighborhood, or whether the use would overburden public services or detrimental to any use of neighboring properties. He told Mr. Brenner that his concern about the use's impact on his property is a valid concern; the Commission does take that into consideration.

Commissioner Johnson stated that the City has already legislatively determined that daycare facilities are compatible with residential neighborhoods subject to the Commission's review of the specific use requested. What he heard tonight from the two gentlemen opposing this special exception is a rejection of daycare facilities in their

neighborhood. There is no doubt in his mind that that is a valid concern and he is sorry that that is going to happen.

Commissioner Hilton informed Mr. Brenner that he should read the Zoning Ordinance about the other allowed uses in residential with exceptions.

Commissioner Ostell stated that she is glad when she sees a home business being licensed.

Commissioner Johnson moved, seconded by Commissioner Holtz to recommend approval of Special Exception SPX2005-00352, Tamar & David Pinto to the Board of Appeals per staff recommendations. The motion passed on a vote of 6-0.

COMMISSION ITEMS

Old Business

Commissioner Holtz questioned whether the three homes on West Montgomery Avenue have been sold. Mr. Mellander replied that he presumed so. He said he would check on it.

Chief of Planning's Report

Mr. Mellander reported that the Chestnut Lodge PRU application was submitted yesterday afternoon to the Planning Division. The application would be coming before the Commission soon. He described the project as a proposal for 36 single-family houses, renovating a historic house, Frieda's cottage, and adding seven condominium units in the old hotel. The application is scheduled for a July 2005 public hearing.

Commissioner Hilton said that the historic red barn is in terrible shape and becoming more and more historic.

Commissioner Ostell said that there has been some discussion about the Rosehill House possibly buying the barn and some acreage to add to their property. Mr. Mellander said he does not know the status, but he would talk to Judy Christensen about it.

Approval of Minutes

Commissioner Wiener moved, seconded by Commissioner Hilton to approve the minutes of Meeting No. 6-05 as written. The motion passed on a vote of 5-0-1 Commissioner Johnson abstaining.

Commissioner Johnson moved, seconded by Commissioner Holtz to approve the minutes of Meeting No. 5-05 as written. The motion passed on a vote of 6-0.

Commissioner Hilton moved, seconded by Commissioner Johnson to approve the minutes of Meeting No. 5-05 as written. The motion passed on a vote of 5-0-1 with Commissioner Wiener abstaining.

Commissioner Holtz moved, seconded by Commissioner Wiener to approve the minutes of Meeting No. 21-04 as written. The motion passed on a vote of 5-0-1 with Commissioner Ostell abstaining.

Commissioner Johnson moved, seconded by Commissioner Wiener to approve the minutes of Meeting No. 18-04 as written. The motion passed on a vote of 6-0.

ADJOURN

After further discussion, the meeting adjourned at 8:02 p.m.

Respectfully submitted,

Tyler Tansing, Commission Secretary